

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8042
Conference Calendar

ROY THOMAS,

Plaintiff-Appellant,

versus

DAN SMITH, Sheriff, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-92-CA-322
- - - - -
(December 14, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Roy Thomas was incarcerated in the Bell County Jail. On October 21, 1990, he slipped and fell in the shower injuring his lower back and left shoulder. The next day, Thomas was scheduled to see an outside doctor by Nurse Kates. Thomas was taken to Temple Medical Center for x-rays. Dr. Stephen J. Vancura directed that Thomas's lower back be x-rayed, but did not order x-rays of his left shoulder. Thomas continued to complain about

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

pain in his left shoulder. He was taken to the infirmary and Nurse Kates treated the shoulder with liniment. On November 18, 1990, Thomas was transferred to the Ramsey Unit of the Texas Department of Criminal Justice, Institutional Division. Thomas continued experiencing pain and underwent surgery to reconstruct his shoulder on December 12, 1991.

Thomas submitted a complaint under 42 U.S.C. § 1983 against the Sheriff Dan Smith, Nurse Kates, and Dr. Vancura based on the above incident. The suit was received by the district court on November 24, 1992, and was filed on December 1, 1992. The district court found that Thomas had become aware of his injury on the day it occurred, October 21, 1990, and that his suit was time-barred. Thomas's suit was dismissed as frivolous.

A reviewing court will disturb a district court's dismissal of a pauper's complaint as frivolous only on finding an abuse of discretion. A district court may dismiss a complaint as frivolous "where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989)). A court may, sua sponte, raise limitations issues in proceedings under 28 U.S.C. § 1915(d) and may dismiss a complaint as frivolous if it is clear that the claims in the complaint are barred by the relevant statute of limitations. Gartrell v. Gaylor, 981 F.2d 254, 256 (5th Cir. 1993).

There is no federal statute of limitations for actions brought pursuant to 42 U.S.C. § 1983. It is well established that federal courts borrow the forum state's general personal

injury limitations. Ali v. Higgs, 892 F.2d 438, 439 (5th Cir. 1990); Owens v. Okure, 488 U.S. 235, 249-50, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989). In Texas, the applicable period is two years. Tex. Civ. Prac. & Rem. Code § 16.003(a) (West 1986); see also, Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989). Although Texas law governs the limitations period and the tolling exceptions, federal law governs when a cause of action arises. Burrell, 883 F.2d at 418. Under federal law, a cause of action arises "when the plaintiff knows or has reason to know of the injury which is the basis of the action." Id. (quoting Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980) (further citations omitted)).

The district court found that Thomas first attempted to file his action on November 24, 1992. Thomas has not disputed this finding, but asserts that he did not become aware that he had a serious injury until December 1991 when he was sent to the hospital in Galveston. A plaintiff need not know that his constitutional rights were violated to have a cause of action accrue, he must simply be in possession of the "critical facts" that he has been injured and that the defendant was involved. See Freeze v. Griffith, 849 F.2d 172, 175 (5th Cir. 1988). In this case, the district court did not abuse its discretion in finding that Thomas was in possession of the critical facts regarding his injury in October 1990.

AFFIRMED.